

*Attorneys for Defendant,
Andrew Anglin*

TANYA GERSH,
Plaintiff,
vs.
ANDREW ANGLIN,
Defendant.

NOTICE OF CONSTITUTIONAL QUESTION

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Pursuant to Fed. R. Civ. P. 5.1(a)(2), Defendant, Andrew Anglin, hereby gives notice to the Attorney General of the State of Montana of a question of the constitutionality of a Montana state statute,¹ to wit:

1. On April 17, 2017, Plaintiff, Tanya Gersh, filed a Complaint (Dkt. No. 1) alleging, *inter alia*, violation of the Anti-Intimidation Act, Mont. Code Ann. § 27-1-1503(2).

2. On November 30, 2017, Defendant filed a Motion to Dismiss (Dkt. No. 31) moving to dismiss the Complaint, *inter alia*, under Fed. R. Civ. P. 12(b)(6). See also Dkt. No. 32.

3. Such motion questions the constitutionality of Mont. Code Ann. § 27-1-1503(2) under the First Amendment of the U.S. Constitution, as incorporated by the Fourteenth Amendment thereof, both facially and as-applied.

4. A true and correct copy of Defendant's Motion (Dkt. No. 31) and Memorandum, with Exhibits (Dkt. No. 32), and Defendant's Reply memorandum (Dkt. No. 59) are served herewith upon the Attorney General of the State of Montana by certified mail and by electronic mail.

¹ Although Defendant is aware that this Court has dismissed claims by plaintiffs for failure to promptly comply with the notice requirement, see *Skogen v. Kosola*, No. CV 16-50-H-DLC-JTJ, 2017 U.S. Dist. LEXIS 167301, at *15-16 (D. Mont. Oct. 10, 2017), such does not apply to a defense. Moreover, "Rule 5.1 itself provides that '[a] party's failure to file [*13] and serve the [Rule 5.1] notice ... does not forfeit a constitutional claim or defense that is otherwise timely asserted.'" *Montes v. Breckinridge Prop. Fund 2015, LLC*, No. 15-CV-2782-AJB-JMA, 2016 U.S. Dist. LEXIS 174954, at *12-13 (S.D. Cal. July 1, 2016) quoting Fed. R. Civ. P. 5.1(d). Thus, Defendant's constitutional defense is not forfeited.

WHEREFORE Defendant hereby complies with the notice requirements of Rule 5.1.

Dated: April 3, 2018.

Respectfully submitted,

/s/ Marc J. Randazza

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Case No. 9:17-cv-50-DLC-JCL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 3, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

I FURTHER CERTIFY that on April 3, 2018, a true and correct copy of the foregoing document was served with enclosures via certified U.S. Mail and email upon:

Hon. Tim Fox
Attorney General
Justice Building, Third Floor
215 North Sanders
P.O. Box 201401
Helena, MT 59620
contactdoj@mt.gov

/s/ Jay M. Wolman

Jay M. Wolman

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